

DEFINITIONS

1250 hours of work means actual work hours and does not include holidays, time spent in paid or unpaid leave, vacation leave, sick leave, or personal leave, compensatory time off, time spent receiving benefits under the State's Long/Short Term Disability Program or time during the elimination period prior to receiving benefits under the Disability Program. (source 29 CFR 825.110(a), (c), and (d)). In determining whether a veteran meets this requirement, the hours that were actually worked for the state should be combined with the hours that would have been worked during the twelve months prior to the start of family-medical leave but for the military service.

Aggregate twelve (12) months service means consecutive or non-consecutive employment in agency(s) subject to the executive authority of the Governor for a combined total of twelve (12) months. (source 29 CFR 825.110(a), (b), and (d)). In determining whether a veteran meets this requirement, the months employed by the state should be combined with the months that would have been worked but for the military service.

Child means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee has day-to-day responsibility for care and financial support, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

- (1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.
- (2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

Documentation for purposes of confirming family relationship means the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, or a court document. The employer is entitled to examine documentation such as a birth certificate, but the employee is entitled to the return of the official document submitted for this purpose.

Documentation for a serious health condition means a completed Certification of Health Care Provider form or other document containing sufficient information to determine whether a serious health condition exists.

Employee means a person who has been employed in agency(s) subject to the executive authority of the Governor for an aggregate twelve (12) months service and who have performed at least 1250 hours of work in such agency(s) during the twelve (12)-month period immediately preceding the need for family-medical leave.

Employer means the appointing authority or designee of the agency employing the employee at the time leave under this policy is taken.

Fiscal Year means the twelve-month period beginning July 1 and ending June 30.

Health Care Provider means one of the following persons who may complete a Certification for Health Care Provider form and certify a serious health condition for an employee, or the spouse, child, or parent of an employee:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefit manager; and
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Parent means a biological, adoptive, or foster parent or an individual who had day-to-day responsibility for care and support of the employee when the employee was a child as defined below. In-laws do not qualify.

Serious Health Condition means an illness, injury, impairment, or physical or mental condition that involves one of the following:

(1) Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

(2) Absence Plus Treatment

A period of incapacity of more than three consecutive calendar days that also involves treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

(4) Chronic Conditions Requiring Treatments

A chronic condition which:

- (a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

(5) Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(6) Multiple Treatments (Non-Chronic Conditions)

Any absences to receive multiple treatments for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive days if not treated, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), and kidney disease (dialysis).

Non-eligible medical conditions include (but are not limited to): taking over-the-counter medications, bed-rest, drinking plenty of fluids, or any similar activities that can be initiated without a visit to a health care provider unless something more serious is involved. The common cold, flu, ear aches, upset stomach, minor ulcers, headaches, routine dental problems, and periodontal diseases are conditions that do not qualify for family-medical leave. Cosmetic treatments and plastic surgery are not serious health conditions unless inpatient hospital care is required or complications develop.

Family-medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.

For intermittent leave or leave on a reduced schedule, there must be a medical necessity for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition must meet the requirement for certification of the medical necessity of intermittent leave or leave on a reduced schedule. Employees needing intermittent leave or a reduced schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an

alternative position with equivalent pay and benefits that better accommodates the employee's intermittent leave or reduced schedule.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. Most state employees reside in Indiana or the surrounding states where neither common law nor same sex marriages are recognized.

RESPONSIBILITIES

Employee is responsible for:

- requesting FML only for appropriate uses;
- knowing the amount of his/her FML balance;
- providing sufficient information for a determination whether an absence qualifies for FML;
- using the minimum FML required for each qualifying event;
- scheduling appointments outside work hours whenever possible and, where not possible, scheduling appointments to cause the least disruption to operations; and
- complying with all requirements for securing FML including advance notice and documentation requirements.

Employer is responsible for:

- implementing this policy in an appropriate and consistent manner;
- developing and distributing procedures for employees to secure FML, including identifying persons to be notified with requests for leave and any required notification procedures or forms;
- approving leave only for appropriate uses;
- approving or denying requests for FML within the specified time limits;
- requesting second (and third) opinions and recertifications in appropriate circumstances;
- notifying employees of FML designations, including appropriate general posting and specific notice requirements;
- designating FML in all appropriate circumstances;
- maintaining health care benefits when employee pays his/her portion of the premium;
- reinstating employees properly and expeditiously in appropriate circumstances;
- keeping accurate and up-to-date records for each affected employee; and
- taking appropriate actions, including discipline, when an employee fails to abide by the requirements of this and related attendance and leave policies.

PROCEDURES

NOTICE AND CERTIFICATION

Employees who need to be absent from work must follow this procedure concerning notice and certification of absences for FML-qualifying reasons:

1. Complete and submit a Request for Family-Medical Leave Form to the human resources office at least thirty (30) days in advance of foreseeable absence(s). Failure to meet this time limit may delay the start of family-medical leave.
2. If the absence is for the employee's own serious health condition or because s/he is needed to provide care for his/her spouse, child, or parent with a serious health condition, s/he must submit a completed Certification of Health Care Provider form. This Certification should be provided with the Request for Family-Medical Leave whenever possible and no later than fifteen (15) calendar days after submitting the Request for Family-Medical Leave Form. Failure to meet this time limit may delay the start of family-medical leave.
3. If the absence is unforeseeable, notify the human resources office as soon as practicable. That is usually within two (2) business days from learning of the need for an absence. As soon as possible after oral notice, the employee must complete and submit a Request for Family-Medical Leave Form to the human resources office.
4. If the absence is an emergency, complete and submit a Certification of Health Care Provider within fifteen (15) calendar days of submitting the Request for Family-Medical Leave Form.
5. When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employee shall also consult with the employer to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc.

Employers must follow this procedure concerning notice and certification of absences for FML-qualifying reasons:

1. The employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination.
2. The employer must notify the employee within two (2) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met

through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. See Forms & Attachments below.

3. The employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit. FML may be provisionally designated pending receipt of required documentation.

4. The employer must make a reasonable effort to work with the employee who is planning medical treatment to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employer shall also work with the employee to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc.

5. The employer must give an employee a reasonable opportunity to clarify the information provided by a health care provider or cure any deficiency in the documentation.

6. The employer may require a second medical opinion of an original certification by a health care provider who does not regularly contract with the employer. The employer must reimburse an employee or the employee's spouse, parent, or child for any reasonable "out of pocket" travel expenses incurred to obtain the second opinion. If the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved by both employee and employer acting in good faith to attempt to reach an agreement. The employer shall provide the employee with a copy of the second and third medical opinions upon request.

7. The employer may not designate leave as FML after the employee has returned to work with two (2) exceptions:

a. If the employee was absent for a FML reason and the employer did not learn the reason for the absence until the employee's return, the employer may, upon the employee's return to work, designate the leave retroactively within two (2) business days of that return and with appropriate notice to the employee. If leave is taken for a FML reason but the employer was not aware of the reason and the employee desires that the leave be counted as FML, the employee must notify the employer within two (2) business days of returning to work of the reason for the leave. In the absence of such timely notice by the employee, the employee may not subsequently assert FML protections for the absence.

b. If the employer knows the reason for the leave but has not been able to confirm that the leave qualifies as FML, or where the employer has requested medical certification which has not yet been received or the parties are in the process of obtaining a second or third medical opinion, the employer should make a preliminary designation and so notify the employee at the time leave begins or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for a FML reason, the preliminary designation becomes final. If the medical certification fails to confirm that the reason for the absence was a FML reason, the employer must withdraw the designation (with written notice to the employee) and take appropriate action under other leave or discipline policies.

RECERTIFICATION

1. The employer may request recertification in any of the following circumstances:
 - a. Thirty (30) days have elapsed since the last certification and the request is in connection with an absence.
 - b. The minimum duration of the period of incapacity specified in a previously submitted certification has expired.
 - c. The employee requests an extension of leave.
 - d. Circumstances described by the previous certification have changed significantly.
 - e. The employer has information that casts doubt upon the continuing validity of the certification.
 - f. The employer has information that casts doubt upon the employee's stated reason for absence.
2. No second or third opinion may be required on a recertification.
3. The employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit.
4. The employee must provide any recertification form(s) within the specified time frame and pay any expenses related to any recertification.

WORKERS' COMPENSATION

Family-medical leave runs concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FML until the twelve (12)-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and the employer requires the use of accrued paid sick leave. The employee may choose to use other accrued paid leave upon the exhaustion of his/her sick leave balance.

STATE'S LONG/SHORT TERM DISABILITY PROGRAM

Family-medical leave runs concurrently with the elimination and benefits periods under the State's Long/Short Term Disability Program. Should an employee exhaust the twelve (12)-week entitlement to FML and subsequently remain eligible for benefits under the Disability Program for more than twelve (12) months, a subsequent written notice should be sent to the employee that FML is being charged concurrently again until the entitlement runs out or the employee returns to work, whichever occurs first.

MAINTENANCE OF HEALTH BENEFITS

The employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

Therefore, the employer must notify the insurance carriers whenever an employee is covered by approved FML, but not in pay status for more than one (1) pay period.

Upon such notice, the insurance provider will bill the employee directly for his/her portion of the premium for which the employee would be responsible had s/he not taken FML.

It is the employee's responsibility to pay such bill from the provider if s/he desires to maintain coverage under any group health plan provided by the employer. Once the insurance carrier notifies the employer that the employee has paid his/her portion of the premium, then the employer is obligated to pay the employer's portion of the premium. The employer must send to the carrier a copy of the Deductions/Other Earnings (D/OE) override form that will be submitted to the Payroll Section of the Auditor's Office as soon as the employee returns to work and the payroll account is reopened. If the employee is covered by the State's Long/Short Term Disability Program, the agency must notify the Third Party Administrator (TPA) that the employee has paid his/her portion of the premium. The TPA will then pay the employer's portion and bill the agency for that amount.

Coverage under the dental, and vision insurance plans must be maintained by the employer even if the employee is not obligated to pay a portion of the premium.

If the employee has chosen not to retain group health plan coverage during FML, the employee is entitled, upon return to work, to be reinstated on the same terms as prior to taking the leave without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

If the employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FML, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. This includes participation in open enrollment and the opportunity to change coverage due to

qualifying events. Therefore, the employer must provide notice and necessary forms to the employee for these purposes.

JOB RESTORATION

The employee is responsible for notifying the employer of his/her intent to return, or not to return, to work.

The employee shall notify the employer as soon as possible of his/her intent to return to work earlier than originally planned and shall provide reasonable notice (usually two (2) business days) in order to arrange an early return to work.

The employer shall return the employee to the same or equivalent position upon his/her return to work from FML. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc. as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

If an employee who has exhausted his/her entitlement to FML remains on leave under provisions of workers' compensation, disability program, or the American's with Disabilities Act (ADA), the employer is responsible for applying the reinstatement requirements under the applicable law or program rather than the reinstatement provisions under FML.

It is the employer's burden to show that an employee otherwise entitled to reinstatement under the provisions of FML is not entitled to reinstatement due to reasons other than his/her FML absence. An employee has no greater right to reinstatement or other benefits or conditions of employment than if the employee had been continuously employed during the FML period.

REFERENCES

Family-Medical Leave Policy
29 CFR §825
31 IAC 2-11
31 IAC 1-9
Vacation Leave Policy
Sick Leave Policy
Personal Leave Policy
31 IAC 3
Workers' Compensation Laws and Rules

FORMS & ATTACHMENTS

[Request for FML Form](#)

[Certification of Health Care Provider - Employee's Own Serious Health Condition](#)

[Certification of Health Care Provider - Spouse, Child, Parent Serious Health Condition](#)

Certification of Health Care Provider Form

<http://www.dol.gov/library/forms/go-us-dol-form.asp?FormNumber=35&OMBNumber=1215-0181>